

Remarks/Arguments:

Claims 1-23 are pending.

Claims 1-7, 9, 10, 14, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,154,659 to Gluckin in view of U.S. Patent No. 6,402,586 to Winik et al. and U.S. Patent No. 4,185,332 to Jahnig.

Claims 8, 15, and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin in view of Winik et al. and Jahnig, and further in view of U.S. Patent No. 2,915,067 to Bracht.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin in view of Winik et al. and Jahnig, and further in view of U.S. Patent No. 5,820,443 to Burr.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin in view of Winik et al., Jahnig, and Burr, and further in view of U.S. Patent No. 6,837,771 to Falla.

Applicants appreciate the courtesies extended to Applicants' counsel during a telephone interview on September 23, 2009. The substance of that interview is as follows:

- 1) The interview did not include any exhibits or demonstrations.
- 2) Claims 1, 14, and 19 were discussed.
- 3) The prior art that was discussed included U.S. Patent No. 5,154,659 to Gluckin.
- 4) Applicants' counsel and the Examiner discussed the differences between the method for forming Applicant's undergarment and the method taught by Gluckin.
- 5) Gluckin does not disclose forming a single laminated fabric blank as the entire structure of one of its brassieres; rather, Gluckin forms individual left and right panels, which are subsequently seamed together to form a completed brassiere (undergarment).
- 6) No other pertinent matters were discussed.
- 7) Applicants would file a Reply and Amendment to overcome the Examiner's new grounds of rejection.

The Combination of References Fails to Disclose Every Element of Applicants' Claimed Invention

In order to establish the *prima facie* obviousness of a claimed invention under 35 U.S.C. 103(a), all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). *See also In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

In its Decision on Appeal dated March 13, 2009, the Board of Patent Appeals and Interferences (the “Board”) stated:

We agree with Appellants that the Examiner erred in finding that Gluckin meets the limitation in independent claims 1 and 14 requiring formation of a sub-assembly (claim 1) or a stretchable laminate (claim 14) that has “a periphery that is larger than an entire outer periphery of the undergarment.”... In the same way, we cannot agree with the Examiner that a person of ordinary skill in the art would consider a half-brassiere to be an “undergarment.”

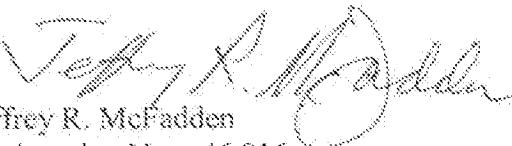
Decision, pages 7-8.

Responsive to the Board’s Decision, the Examiner reopened prosecution, citing new grounds for rejection. Specifically, the Examiner now combines the Jahnig reference, which discloses a single cup brassiere for a one breasted wearer who has undergone a mastectomy, with Gluckin to assert that a single cup brassiere is a complete undergarment.

Claims 1, 14, and 19, as amended, require forming a sub-assembly (Claims 1 and 14) or a laminate (Claim 19) having a periphery that is larger than an entire outer periphery of a breast covering garment and is shaped to cover both breast cups of the breast covering garment. Lacking at least this required limitation, the Examiner’s rejections of independent Claims 1, 14, and 19 under 35 U.S.C. 103(a), based on the combination of Gluckin and Jahnig, must be withdrawn. Since the rejections of each of the independent claims must be withdrawn, the Examiner’s rejections under 35 U.S.C. 103(a) of those claims depending therefrom also must be withdrawn.

Based upon the amendments to the pending claims and the above Remarks/Arguments, Applicants respectfully submits that the application is now in condition for an immediate allowance, and such action is requested. If any matter remains unresolved, Applicants' counsel would appreciate the courtesy of a telephone call to resolve the matter.

Respectfully submitted,



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